

# Material Protection Control & Accounting (MPC&A) Tax Issues and History

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## Material Protection Control & Accounting (MPC&A) Tax Issues and History

### WHAT NEEDS TO BE DONE

- \* Completion of new Interim Taxation of Assistance Agreement including signatures by both governments and implementation (formal recognition) by Russian Federation.
- \* Extension of the June 17, 1992 (CTR) Agreement.
- \* Ratification by the Russian Duma of bilateral Agreements that produce the general guidelines for the Provision of Assistance to Russia: April 4, 1992 and June 17, 1992.
- \* Ratification of any or all of the MPC&A specific agreements: September 2, 1993, January 20, 1995, June 30, 1995, September 27, 1995, October 5, 1995 and January 30, 1996

### 1999

- **February 18, 1999**—Continue with the use of Panskov-Pickering Agreement (P-P) and/or other workable method until new agreement is negotiated.
  - **February 17, 1999**—New 'unofficial' draft interim Taxation of Assistance Agreement received by Embassy, Moscow. It has not been cleared by other Russian government agencies. It is similar to the P-P Agreement. Prime Minister Primakov would be Russian signatory and not MOF. The primary concern is the draft agreement defers rather than exempts taxes. The official draft is expected next week. The draft is intended to be interim until permanent legislation is enacted, however, it is not clear whether a provisional agreement is valid indefinitely. It has been suggested that the agreement be signed at the Gore-Primakov Commission Meeting at the end of March.
  - **February 9, 1999**—**P-P Agreement Cancelled AGAIN.** The State Tax Service has been elevated to a full-fledged Ministry. Tax Minister opposes reinstatement of the P-P Agreement as an interim solution. Tax officials refuse further use of the P-P Agreement. MOF has less influence regarding taxes now that the State Tax Service is at ministerial-level.
- A Government/Parliament reconciliation commission will soon begin to revise Taxation of Assistance legislation to overcome objections raised by Presidential Administration. MOF recommends a new agreement to replace P-P Agreement and the development of new certificates (tax letters).
- **February 1999**—a USG proposal to extend (another seven years) the June 17, 1992 CTR Umbrella Agreement (expires in June) has been sent to the Russian Federation for concurrence and signature.
  - **February 1999**—Recommendation to submit to the institutes as covers letters for the P-P tax letters: Rose Gottemoeller to Georgii Boos, November 20, 1998; M. Zadornov to G. Boos, November 19, 1998; and M. Zadornov to V. Draganov, November 19, 1998.

- **January 12, 1999**—President Yeltsin vetoed the new Draft Tax Legislation for the Russian Federation. The view of the President's office is that the law failed to establish sufficient state control over assistance programs and, further interfered with certain aspects of Russian law and Russian treaty obligations. In particular, it inappropriately attempts to define procedures for foreign Embassies to follow.

The President returned the bill to the Duma. The Duma decided not to try to overturn the veto and not to abandon the legislative effort. It is organizing another conciliation committee (CC) that will include a member of the President's legal staff. This means that if the President's representative agrees with the work of the CC, the President can or will not veto it. This process could take several months.

*Until the Russian Duma passes Taxation of Assistance legislation or an interim mechanism is adopted by the Russian Government, there is NO legally binding implementing mechanism under which relief from taxes and customs duties can currently be received.*

- **January 1999**—Recommendation to all Labs to attach a new cover letter on U.S. Embassy Letterhead (to accompany P-P tax letters) stating something on the order of:

*On November 19, 1998, the P-P Agreement was reinstated by the Ministry of Finance in the Russian Federation. In light of this, we are providing letters of tax deferments for (name of institute).*

## 1998

- **November 20, 1998**—Letter to Head of State Tax Service, Georgii Boos, from Rose Gottemoeller, DOE Director for Nonproliferation and National Security, confirming funds received by Russian nuclear institutes and other organizations from U. S. national laboratories under MPC&A program are funds appropriated by U. S. Congress disbursed by DOE through laboratories for implementation of June 17, 1992 agreement.

- **November 19, 1998**—Re-Instatement of P-P Agreement. The Russian Minister of Finance issued letters to the Russian State Tax Service (#04-06-02/1) and State Customs Committee (#04-06-02/2) re-instating the P-P Agreement pending the adoption of a law granting tax exemptions for aid programs ("Draft Exemptions Law"). MOF letter states State Tax Service letter of June 23, 1998 becomes ineffective and both State Tax Service and Customs should be guided by the P-P Agreement when dealing with assistance by the Government of the U.S.

Many problems arose in the past prior to the cancellation of the P-P Agreement and may still continue even with the indefinite re-instatement. The Ministry of Finance letters will require implementing action by the State Tax Service and compliance by local tax officials. It is possible that federal and/or local tax officials could challenge or disregard the Ministry of Finance's directive to re-instate the P-P Agreement. Unfortunately, there are already incidents being reported where this is the case. In addition, there are many issues that the P-P Agreement does not address, including, but not limited to the taxing of subcontractor services and income tax on worker salaries (pension fund, social fund, medical fund, unemployment fund, transportation tax and trade union dues.

- **November 1998**—Recommend continue utilizing and processing tax deferment letters per the P-P Agreement.

- **August 1998**—Letter to Ambassador from First Deputy Head of the State Tax Service, V. Gusev, stating P-P Agreement no longer valid according to Russian law. Reiterates December 22, 1993, April 17, 1996, May, 27, 1996, April 28, 1997, May 19, 1997, December 22, 1993 and the November 15, 1997 cancellation of Presidential Decree, No. 2270. All postponed taxes to be collected.

- **June 23, 1998**—**P-P Agreement Cancelled.** The Russian Ministry of Finance issued Information Letter #2-5-14/50 confirming the State Tax Services' decision canceling the P-P agreement. All taxes due, but not collected because of the P-P Agreement now should be collected. This cancels First Deputy Prime Minister Chubias letter, April 28, 1997, extending the P-P Agreement. Also cancels MOF letter of April 28, 1997.

Contracts between DOE Laboratories and Russian counterparts are written with the assumption that all work performed under the MPC&A program is tax exempt. Therefore, efforts by Russian tax authorities to collect current taxes, back taxes, and penalties have placed serious strains on the MPC&A program's already financially troubled Russian counterparts

- **May 14, 1998**—Russian Duma passed Taxation of Assistance Legislation (NEW Second and Third reading).

- **April 30, 1998**—Gosatomnadzor receives letter for State Tax Service (M. Shiyonok) indicating P-P Agreement no longer valid. Khlopin Radium Institute also received a similar letter that demanded payment of all taxes on the money received from the U.S.

- **April 21, 1998**—Ambassador receives letter from First Deputy Head of State Tax Service, V. Gusev, states P-P Agreement no longer valid according to Russian law.

*Per letter to Ambassador from V. Gusev in response to Dec 97 letter from Ambassador to A. Pochinok, Director, State Tax Service. June 17, 1992 Agreement took effect from signature date that is in conformity with Article 11 "Ways of Expressing compliance with an Agreement," of the Vienna Convention on the Legitimacy of International Agreements, dated May 23, 1969. It is stated in Article 11 of this Agreement that merchandise and services bought in the RF by the USA or on behalf of the USA under this Agreement shall be exempted from Russian taxes, customs duties and fees. **This stipulation is in contradiction with the Russian Tax Law currently in force.***

*Pursuance of Article 14 of the law "On the order of conclusion, execution and enunciation of international agreements of the USSR" No. 7770-IX, April 6, 1978, provisions of an international agreement that establish rules other than granted by statutes of the Russian law shall be implemented **IF THE AGREEMENT HAS BEEN RATIFIED** in due order. This law was valid until July 21, 1995, when Federal Law No. 101-FZ on the international agreements of the Russian Federation, July 15, 1995, took effect, also stipulating that **ratification of international agreements is necessary.***

*State Tax Service viewpoint: Enterprises and organizations operating within the context of the above agreement, may be granted tax privileges **either upon ratification** of the agreement in compliance with Federal Law "On the international agreements of the RF or on condition that Supreme State bodies of RF issue an edict pronouncing legal status for certain provision of the said agreement that establishes rules other than granted by statutes of the Russian law.*

*P-P Agreement (April 17, 1996) was the basis for tax deferrals granted within the framework of RF Presidential Decree No. 2270, December 22 1993, "On some changes of interrelated budgets at different levels," which stipulated tax deferral may be granted for no longer than a 6 month term and only within the current calendar year.*

*RF Presidential Decree, No. 2270, no longer valid since November 15, 1997.*

*The State Duma considered at the same time the draft law, "On introduction of changes and additions to certain statutes of the law of the RF on taxes and privileges related to contributions to the non-budget State funds in connection with gratuitous aid rendered to the RF by foreign States and international organizations." Law should have determined the order of taxation of the gratuitous aid granted to the RF by any foreign State or international organization. Therefore, tax deferrals were expected to become tax exemptions under the above law. However, draft law has not been completed and the law sent for adjustment to appropriate committees of the Duma.*

*Consequently, there is uncertainty on the validity of the P-P Agreement given Decree No. 2270 being abolished.*

*If law "On introduction of changes and additions to certain statutes of the law of the RF on taxes and privileges related to contributions to the non-budget State funds in connection with gratuitous aid rendered to the RF by foreign States and international organizations" NOT adopted, all taxes due to be paid but delayed in accordance with the deferral mechanism shall be COLLECTED.*

- **March 26, 1998**—Russian Federal Law, No. 42-F, About Federal Budget for the Year of 1998. In accordance with clause 23 of the Law, postponements and (or) installment systems on tax payments and other obligatory payments to the federal budget can be granted to a taxpayer for a period which is not longer than the end of a current year, but not more than six months...(additional info on Cable 12958, 071404Z May 98)
- **January 1998**—Duma rejects "Third and Final" reading of draft tax code. Sent back for amendments and another "Second" reading.

## 1997

- **December 1997**—Letter to Director of State Tax Service, A. Pochinok, from Ambassador requesting Tax Service to stop efforts by Chelyabinsk region tax authorities to collect taxes on CTR provided assistance.
- **November 1997**—The P-P Agreement was declared invalid by the Russian State Tax Service and effectively ceased all tax deferments for U.S. assistance programs in Russia.
- **November 1997**—Duma passed "Second" reading of the draft tax code—contrary to expectations.
- **November 15, 1997**—Presidential Decree, No. 2270 (see December 22, 1993) cancelled/expired, thus P-P Agreement not applicable any further.
- **June 1997**—Duma passed "First" reading of the new draft tax code.
- **May 19, 1997**—State Tax Service Letter BE-6-06/378 to subordinate tax authorities from Deputy Chief State Tax Service, V. Yevstignevev, to advise of present order and ensure provisions established by P-P Agreement is observed.
- **April 28, 1997**—Letters to State Custom Committee, A. Kruglov and State Tax Service, A. Pochinok, from First Deputy Prime Minister A. Chubais, stating that the Russian federal law on privileges in taxation and other payments into the budget during transactions under the gratuitous foreign assistance to the Russian economy will be considered by the State Duma in the near future. Based on this, the State Tax Service letter of March 28, 1997, and MOF extending the P-P Agreement, Chubais request Customs (Kruglov) and State Tax Service

(Pochinok) to notify Customs and Tax services of the above and adherence to the provision of the P-P Agreement.

- **April 28, 1997**—MOF Letter No. 04-0602/1, extends effective period of P-P Agreement.
- **April 13, 1997**—Decision of the Government of the Russian Federation, A-18-11251, signed by First Deputy Prime Minister A. Chubais states agreement with State Tax Service suggestion providing for deferral of tax payments in connection with implementation of assistance programs provided to the RF by the USG on a grant basis. Copies to State Tax Service and MOF (Shatalov).
- **March 28, 1997**—Letter to GOR from State Tax Service requesting to charge MOF to solve issue of postponement for payments into the budget under the gratuitous assistance rendered to Russia by the U.S. Government.

## 1996

- **October, 21, 1996**—Letter to Director of State Tax Division, V. G. Artyuknov, from MOF, A. Livshin, stating necessity to extend P-P Agreement until the adoption of the law, "Introducing changes and additions to individual legislative acts of the Russian Federation about taxes and establishing a reduction in payments to the State extra budget funds under gratuitous assistance to the Russian Federation by foreign states and international organizations."
- **May 27, 1996**—State Tax Service Letter, BII-6-06/363, provided text of the P-P Agreement and to inform tax inspectors at different levels.
- **May 22, 1996**—State Customs Committee of the Russian Federation Directive, No. 01-14/529—Regarding relief of goods imported from the U.S. in accordance with inter-governmental agreements from customs tariffs. **(With attachment sample certificate addressed to the Customs Chief signed by First Deputy Minister for Atomic Energy, V. Konovalov, First Deputy Minister for Atomic Energy, L. Ryabov, and Deputy Minister for Atomic Energy, N. Egorov.)**
- **April 17, 1996**—P-P Agreement—initially provided a mechanism by which Russian institutes and enterprises participating in the Material Protection, Control, and Accounting (MPC&A) program could request tax deferment status on all payments and equipment received under contracts signed with U.S. DOE National Laboratories.

According to this agreement (and guidelines from U.S. Embassy, Moscow), DOE Laboratories could issue tax deferment letters to their Russian counterparts who in turn could present the letters to tax authorities to obtain appropriate tax deferments. The taxes deferred under the agreement are of four principle types: profits tax; value-added tax (VAT), excise, and customs duties tax; property tax; and personal income tax.

## 1994

- **January 24, 1994**—RF Decree N39—On exemption of goods passing through the Customs of Russia Federation from customs duties in accordance with international disarmament agreements.

## 1993

- **December 22, 1993**—Presidential Decree, No. 2270, "On some changes of interrelated budgets at different levels" was sufficient for tax postponement for P-P Agreement, but payments could be postponed within a calendar year for a period not exceeding 6 months.

## MPC&A Specific Agreements

- **September 2, 1993**—Agreement Between the Department of Defense of United States of America and the Ministry of the Russian Federation for Atomic Energy Concerning Control, Accounting, and Physical Protection of Nuclear Material. This agreement does not specifically speak to taxes, but instead states that all activities undertaken under this agreement are subject to the provisions of the June 17, 1992 Agreement.

*NEWER MPC&A agreements:*

*January 20, 1995, June 30, 1995, September 27, 1995, October 5, 1995 and January 30, 1996.*

## 1992

- **June 17, 1992**—Second agreement signed: Agreement Between the United States of America and the Russian Federation Concerning the Safe and Secure Transportation, Storage and Destruction of Weapons and the Prevention of Weapons Proliferation. This agreement refers to the Bilateral Agreement, and relative to taxes, reiterates the language of the bilateral. *(February 1999—USG proposal to extend (another seven years) has been sent to the RF to agree and sign the extension ASAP.)*

- **April 4, 1992**—First agreement relative to tax issues signed: Agreement Between the Government of the United States of America and the Government of the Russian Federation Regarding Cooperation to Facilitate the Provision of Assistance. Commonly known as Bilateral Agreement

*Commodities, supplies, or other property provided or utilized in connection with United States assistance programs may be imported into, exported from, or used in the Russian Federation free from tariffs, dues, customs duties, import taxes and other similar taxes or charges imposed by the Russian Federation, or any subdivision thereof."*

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